

# Weekly Summary of Cases National Labor Relations Board

Week of October 4-8\*, 2010, W-3281 \*Include cases from a previous week

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#### **Summarized Board Decisions**

ADT Security Services, Inc. (7-CA-51288; 355 NLRB No. 223) Wyoming, MI, September 30, 2010. [HTML] [PDF]

The Board adopted the administrative law judge's finding that the employer violated the Act by unlawfully withdrawing recognition from the union as the bargaining representative of 14 servicemen in its facility in Kalamazoo, MI. The majority rejected the employer's contention that the servicemen were merged into a group of 27 non-union servicemen at another facility after services were consolidated, and the union servicemen did not represent a majority of employees in the merged unit. In light of the 29-year history of bargaining between the employer and the union at the Kalamazoo facility and the fact that the Kalamazoo servicemen did not move after the consolidation, but continued to perform their work in the "Kalamazoo service territory", working from home, driving company trucks, and receiving assignments from a national dispatch center, the majority found that the bargaining unit "maintained its integrity".

Member Hayes, dissenting, found that the Kalamazoo bargaining unit lost its separate identity after the consolidation, and would reverse the judge's finding on the ground that the union did not represent a majority of the employees in the merged unit at the time the Respondent withdrew recognition.

Charge filed by Local 131, International Brotherhood of Electrical Workers (IBEW), AFL-CIO. Administrative Law Judge George Carson II issued his decision December 30, 2008. Chairman Liebman and Members Becker and Hayes participated.

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**DHL Express, Inc.** (9-CA-43277; 355 NLRB No. 224) Wilmington, OH, September 30, 2010. [HTML] [PDF]

The Board adopted the findings of the administrative law judge that, during a union organizing campaign, the employer violated the Act in three separate respects: (1) telling employees that if they selected the union, their wages and benefits would be "frozen" during contract negotiations; (2) threatening an employee who was late to work with stricter enforcement of its tardiness policy if the union was selected as the employees' bargaining representative; and (3) threatening employees that if the union was selected, they would not gain any increase in wages and benefits through collective bargaining.

Charge filed by American Postal Workers Union. Administrative Law Judge Arthur J. Amchan issued his decision June 21, 2007. Chairman Liebman and Members Becker and Pearce participated.

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Independent Electrical Contractors of Houston, Inc. (I.E.C.) (16-CA-18821-2, et al.; 355 NLRB No. 225) Houston, TX, September 30, 2010. [HTML] [PDF]

The Board followed its recent decision in *KenMor Electric Company*, 355 NLRB No. 173 (2010), in which it found that IEC's application referral service, which it operated for its employer members, violated the Act by interfering with employees' exercise of the right to engage in union activity. The same parties most concerned with the legality of the referral service – IEC, the General Counsel, and the Charging Party Union – were parties in *KenMor* and actively litigated this issue. The Board noted that the facts found in *KenMor* and by the administrative law judge here established that the service operated in largely the same manner throughout the two overlapping time periods at issue, and the material evidence was virtually identical. However, having issued a broad cease and desist order in *KenMor* and further required IEC to maintain for a 2-year period written records of the operation of its referral system and to make these records available for review by the Regional Director, the Board found that an additional remedial order in this case would be redundant. On this ground, the Board dismissed the complaint allegation. Member Hayes concurred with the dismissal, finding that IEC's referral system was lawful.

The Board separately found that the employer's discharge of an employee due to union activity was in violation of the Act.

Charges filed by International Brotherhood of Electrical Workers Local 716, AFL-CIO. Administrative Law Judge Jane Vandeventer issued her decision October 5, 2001. Chairman Liebman and Members Becker and Hayes participated.

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**Pacific Coast M.S. Industries Co., Ltd.** (32–CA–22748–1, et al., 32-RC–5443; 355 NLRB No. 226) Tracy, CA, September 30, 2010. [HTML] [[PDF]

The Board found that the employer's team leaders were not supervisors, and therefore the employer violated the Act by suspending and discharging a team leader for union activity. The employer further violated the Act by raising employees' wages to discourage them from voting for the union and by a supervisor's threats of plant closure, futility, and replacement of strikers, threats that the employer did not adequately repudiate. The Board directed that the team leaders' ballots be opened and counted. The Board declined to resolve either party's election objections until after the Regional Director prepares a revised tally of ballots, because a puzzling factual finding regarding the employer's objections would require remand, but the revised tally of ballots may moot the employer's objections and make remand unnecessary. The Board's direction provided for the possible contingencies resulting from a revised tally.

Charges filed by the General Teamsters, Local 439, International Brotherhood of Teamsters. Administrative Law Judge Jay R. Pollack issued his decision May 27, 2007. Chairman Liebman and Members Pearce and Hayes participated.

Southwest Regional Council of Carpenters (Richie's Installations, Inc.) (21-CC-3337, et al.; 355 NLRB No. 227) Los Angeles, CA, October 7, 2010. [HTML] [PDF]

The Board found that the union did not violate the Act by displaying banners proclaiming a "labor dispute" at locations of employers not engaged in a primary labor dispute with the union. The Board relied on its recent decision in *Carpenters Local 1506 (Eliason & Knuth of Arizona)* dismissing an identical allegations regarding similar conduct. Member Hayes dissented, reiterating the views stated in his joint dissent with former Member Schaumber in *Eliason & Knuth* that the display of banners was unlawful.

Charges filed by Richie's Installations, Inc. Administrative Law Judge John J. McCarrick issued his decision August 22, 2005. Members Becker, Pearce, and Hayes participated.

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#### Decisions in cases involving prior rulings by two-member Board

The following cases involve prior rulings by the two-member Board, whose authority to act was rejected by the U.S. Supreme Court decision in *New Process Steel, LP* (June 17, 2010). The new decisions summarized here were reached by a three-member panel of the Board or by the full Board.

Hospital Pavia Perea (24-CA-10505; 352 NLRB No. 215) Mayaguez, PR, September 30, 2010. [HTML] [PDF] Metro Mayaguez, Inc. d/b/a Hospital Pavia Perea

The Board adopted the administrative law judge's finding that the Respondent violated the Act by implementing unilateral changes in employees' terms and conditions of employment. The Board adopted the judge's finding that the Respondent was a "perfectly clear" successor. It found no merit to the Respondent's contention that to constitute a "perfectly clear" successor, an employer must hire all of the former employees. The Board noted that the parties stipulated that the Respondent employee a majority of the former employees when it assumed operations and did not inform employees of an intention to set initial terms and conditions of employment. The Board also adopted the judge's finding that the Respondent violated the Act by promulgating and maintaining an overly broad no-solicitation/no-distribution rule.

Charge filed by Unidad Laboral De Enfermeras (OS) Y Empleados De La Salud. Administrative Law Judge William N. Cates issued his decision April 30, 2007. Chairman Liebman and Members Becker and Pearce participated.

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*Ralphs Grocery Company* (31-CA-27160, et al.; 355 NLRB No. 210) Los Angeles, CA, September 30, 2010. [HTML] [PDF]

The Board adopted the administrative law judge's finding that the Respondent violated the Act by refusing to provide the unions with information regarding the Respondent's hiring of unit employees under false names and social security numbers during a lockout. In rejecting the Respondent's contention that the unions' sole purpose in requesting the information was to support unfair labor practice charges, the Board relied solely upon the fact that the Respondent did not challenge some of the judge's findings regarding this issue.

The Board also found that the judge erred in deferring to compliance the Respondent's contention that an audit conducted by the Respondent's law firm was within the attorney work-product privilege; the Board then found that the audit information was within the privilege and that a balancing of competing interest supported non-disclosure of the audit information.

Charges filed by Food and Commercial Workers Locals 135, 324, 770, 1036, 1167, 1428, 1442. Administrative Law Judge Lana H. Parke issued her decision June 14, 2007. Chairman Liebman and Members Pearce and Hayes participated.

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### **Unpublished Board Decisions in Representation Cases**

*Olympia Healthcare LLC d/b/a Olympia Medical Center* (31-RC-8773) Los Angeles, CA, October 6, 2010. Order denying Employer's request for review of the Regional Director's decision and direction of election. Petitioner – National Union of Healthcare Workers. Chairman Liebman and Members Pearce and Haynes participated.

*Fairfield Toyota* (20-RC-18287) Fairfield, CA, October 6, 2010. The Board having reviewed the report in light of exceptions and briefs, adopted the Regional Director's findings and recommendations, found that a certification of representative should be issued. Petitioner – Automotive Machinists Local Lodge 1173. Chairman Liebman and Members Becker and Hayes participated.

Lutheran Homes of Michigan, Inc. d/b/a Lutheran Home of Livonia (7-RC-23358) Livonia, MI, October 6, 2010. Board Order denying employer's request for review of the Regional Director's decision and direction of election and mooting employer's request to stay election. Member Hayes, dissenting would grant review. Petitioner's SEIU Healthcare of Michigan. Chairman Liebman and Members Becker and Hayes.

American Bottling Company aka Seven-Up/RC Bottling (21-RC-21214) San Diego, CA, October 8, 2010. No exceptions having been filed to the Regional Director's report, the Board adopted the Regional Director's findings and recommendations and ordered that the proceeding be remanded to the Regional Director for further appropriate action.

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## **Decisions of Administrative Law Judges**

*Columbus Transit, LLC* (2-RC-23351, 2-CA-39193; JD(NY)-39-10) Mount Vernon, NY. Petitioner – Transport Workers Union of Greater New York, Local 100, AFL-CIO. Administrative Law Judge Raymond P. Green issued his decision October 4, 2010. [HTML] [PDF]

*Mercy Health Partners* (7-CA-52693; JD(ATL)-21-10) Muskegon, MI. Charge filed by SEIU Healthcare Michigan. Administrative Law Judge George Carson II issued his decision October 4, 2010. [HTML] [PDF]

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